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JAN 02 2009

Ravalli County Commissioners

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Memorandum

TO: Dave Ohnstad; Sheriff Hoffman and
Undersheriff Kevin McConnell.

CC: Commissioners

FROM: Daniel Browder, Deputy

DATE: December 31, 2008

RE: Default speed limits on gravel roads

The question was raised whether state law allows a board of county commissioners to set a "default" speed limit for all gravel roads in the county that are not otherwise posted for speed limits.

The short answer is no. State law gives the county commissioners the authority to alter the state-set default speed limit that applies to gravel roads, but the county must post speed limit signs demarcating the road's altered limit. The statute is silent on how many and how the signs must be posted, but posted signs are required.

Section 61-8-303 and -312 set state-wide default speed limits - 70 mph for cars operating on most public highways outside of urban areas. Under § 61-8-310(1)(c) and -310(2) a board of county commissioners has the authority to alter the state-set speed limit "outside an urban district, but not to more than 35 miles an hour."

The ambiguous part of this statute is -310(4):

An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

It is not clear whether "at all times" is limited by the clause "when

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signs . . . are erected," i.e., the statute could mean that the altered limit is effective at all times whether signed or not, or it may be effective only when signed.

Although the statute's ambiguous language can reasonably be interpreted either way, three other sources lead us to believe that the legally correct interpretation is that signs must be posted for the altered limit to be effective. First, a related statute has slightly different construction that makes the Legislature's intent clearer. Second, an Attorney General's opinion interpreted the statute as requiring signs. Third, MACo apparently interprets the statute to require signs.

First, the similar statute, § 61-8-309(2) articulates a similar signage provision when default speed limits are altered by the state Transportation Commission. In this section, the construction is less unambiguous: "The department of transportation shall erect and maintain appropriate signs giving notice of special limits. When the signs are erected, the limits are effective for those zones at all times or at other times that the commission sets." This analogous statute makes clear that these limits are effective only upon sign posting.

Second, an Attorney General's Opinion considering another aspect of § 61-8-310 states that "A speed limit adopted in accordance with [§ 61-8-310] becomes effective 'when appropriate signs giving notice of the altered limit are erected on the roadway.' " 40 Mont. Op. Att'y Gen.51

Third, MACo interprets § 61-8-310 to require signs for an altered speed limit to become effective. Harold Blattie writes in his October 12, 2008 email to Rick Liabe: "In the 2003 session Senator Steinbeisser introduced SB 226 which would have mandated a 50 MPH state-wide speed limit on county gravel roads, *unless a county set another limit and posted signs indicating the limit.*" (Emphasis

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added.)

Because the County Attorney will be criminally prosecuting violations of any speed ordinance, our office believes a speed limit ordinance should not be based on ambiguous statutory interpretation. We therefore advise you to interpret § 61-8-310 as requiring signs to make a county speed limit effective.

Going forward, if Senator Liabe is still interested in bringing a bill to the Legislature, and if the County is interested in pursuing it, a bill could be introduced to amend the law to give "local authorities" (including counties) statutory authority to set default speed limits to apply when signs are absent. I think that the best way to amend the Montana Code to give counties that authority would be by amending § 61-8-310(4) (quoted above). We would be happy to review, and assist in drafting any proposed amended language, and are available to consult with drafters employed at the Legislature.

I'm sure Dave would also have good ideas of what measures would be appropriate to give motorists notice of the default speed limit and whether any amount of signage would be recommended for liability purposes. Although the general rule is that citizens are assumed to have notice of the laws of a given jurisdiction, I think that some notice to the public would enhance an ordinance's defensibility in the face of a challenge.

If the decision is made to introduce a bill giving local authorities the authority to pass "default" speed limits that apply when no specific sign is present, then the statistics of accidents and injuries on gravel roads in the county (collected by Road Department and RCSO) should be compiled and summarized to accompany the bill's introduction, so the legislators are persuaded that the issue affects the public health and welfare of County residents.

DB:hs